

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

PATTY D. DAVIS

PLAINTIFF

V.

CIVIL ACTION NO.: 1:08CV214-SA-SAA

**MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION**

DEFENDANT

ORDER

Presently before the Court is a Motion for Attorney Fees and Court Costs under the Equal Access to Justice Act [21]. After considering the motion, the Court finds as follows:

The Equal Justice Act (EAJA) provides in relevant part:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). Thus, an award of fees is mandated if (1) the claimant is a “prevailing party”; (2) the position of the United States was not “substantially justified”; and (3) there are no special circumstances that make an award unjust. See Commissioner v. Jean, 496 U.S. 154, 158, 110 S. Ct. 2316, 110 L. Ed. 2d 134 (1990); Sims v. Apfel, 238 F. 3d 597, 599-600 (5th Cir. 2001).

Here, Plaintiff’s counsel requests \$4,545.39 for 27.00 hours of service, plus the following court costs and expenses: filing fees \$350.00, copying costs \$14.80, and postage expenses \$35.95. Defendant agrees Plaintiff should receive \$4596.14 (attorney

fees, copying costs, and postage expenses) from the Defendant. Although Defendant agrees that Plaintiff should be reimbursed \$350 for the filing fee, Defendant asserts this fee is a cost that must be paid from the Judgment Fund administered by the Department of the Treasury and not out of Social Security Administration appropriations. See 28 U.S.C. § 2412(c)(1) and 31 U.S.C. § 1304.

The Court finds, pursuant to 28 U.S.C. §2412(d), that Defendant is ordered to pay Plaintiff's attorney, Elizabeth Dunlap, the amount of \$4,596.14, which represents 27 hours of attorney fees plus \$50.75 in expenses. The Court further orders that Plaintiff shall be reimbursed \$350.00 for her filing fee from the Judgment Fund. See 28 U.S.C. § 2412(c)(1) and 31 U.S.C. § 1304.

SO ORDERED, this the 6th day of November, 2009.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE